IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 11668 of 1997

Between:

Samalkot Municipal Shops Rent Payers Association rep. by its Secretary K. Ramachandra Rao, (Regd.No.221/75), Samalkot, E.G.Dist.

..... PETITIONER

AND

1 The Estate Officer & Addl. Divisional Railway Manager,
South Central Railway, Vijayawada
2 Samalkot Municipality, rep. by its Commissioner,
Samalkot, East Godavari Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of a writ of Mandamus or any other appropriate Writ declaring the action of the Respondents in trying to dispossess the members of the petitioner Association from the shops situated abutting the Railway Station as illegal, arbitrary and without jurisdiction and consequently direct the respondents herein to drop all further proceedings in this regard against the members of the petitioners Association.

Counsel for the Petitioner:MR.N.SIVA REDDY

Counsel for Respondent No.1 : MR.GOURI SHANKAR SANGHI (not appeared)

Counsel for Respondent No.2:MR.E.SAMBASIVA PRATAP (not appeared)

The Court made the following :

ORDER

It is the case of the petitioner-association that the members of its association obtained the shops on lease from the second respondent-Municipality, situated near Railway Station of Samalkot in the year 1971 in the auction and the lease was renewed from time to time by the second respondent-municipality. While so, the first respondent issued notice in Form 'A' under sub-Section (1) of Section 4 of the Public Premises (Eviction of unauthorized occupants) Amendment Act, 1980 to the members of the petitioner-association calling upon to show-cause as to why eviction should not be ordered from the shops where they are carrying on business. It is stated that pursuant to the said show-cause notice, the members of the petitioner-association submitted their reply stating that it is the second respondent, who leased out the property to them and they are the lessees of the second respondent. It is submitted that after issuance of the show-cause notice, the members of the petitioner-association stopped payment of the rents in view of the confusion and requested the second respondent to settle the issue with the first respondent and filed the present writ petition contending until and unless the title dispute between the first and second respondents is settled, the petitioners cannot be evicted from the shops in question.

The first respondent herein filed a counter affidavit along with vacate stay petition stating that the second respondent has unauthorizedly constructed the shopping complex by encroaching into the land belonging to the railways and on coming to know of the same, when a joint survey with the revenue authorities was conducted, it is found that the entire land where the construction has undertaken by the second respondent belongs to the railways. In view of the same, proceedings were initiated under Section 4(1) of the Public Premises (Eviction of unauthorized occupants) Amendment Act, 1980 for eviction of the occupants of the land. It is stated that pursuant to issuance of the notification, the second respondent addressed a letter to

the first respondent on 15.4.1997 and on 1.5.1997 seeking time to settle the issue and requested not to take steps for eviction of the occupants. It is stated that since the issuance of notice in Form 'A' is only a show cause notice, the writ petition against such a show-cause notice is not maintainable and prayed for vacating the interim order granted by this Court on 11.6.1997.

Heard the learned counsel for the petitioner. None appears for the respondents.

Learned counsel for the petitioners contends that the members of the petitioner-association were the highest bidders in the auction conducted by the second respondent and they got the lease hold rights in respect of the shops in question in the year 1972 and since then they have been in possession of the same by paying rents to the second respondent and hence, until the title dispute between the first and second respondents is resolved, the petitioners cannot be termed as unauthorized occupants and the impugned proceedings have to be withdrawn.

It is relevant to note that none of the lessees, who were served with the notices under the provisions of Public Premises (Eviction of unauthorized occupants) Amendment Act, 1980, have chosen to challenge the proceedings in individual capacity. Since the present writ petition is filed by the petitioner-association, the same is not maintainable in view of the principles laid down by a Division Bench of this Court in Writ Appeal No.567 of 2001 dated 17.4.2001. Even otherwise, the impugned notice is only a show-cause notice calling upon the members of the petitioner-association, who were lessees under the second respondent, to show cause as to why eviction should not be ordered and intimating that the land do not belong to the second respondent. If that be the case, the appropriate course for the members of the petitioner-association is to submit their explanation to the show-cause notice and participate in the enquiry to be conducted by the first respondent and ultimately if any adverse orders are passed, they can avail the remedies available under the said Act by filing an appeal before the District Court. Hence, I see no merits in the writ petition and the same is liable to be dismissed.

Accordingly, the writ petition is dismissed with the above observation. No costs.

A. GOPAL REDDY. J.

25th October, 2004

tsr.

To

1 The Estate Officer & Addl. Divisional Railway Manager,
South Central Railway, Vijayawada
2 The Commissioner, Samalkot Municipality,
Samalkot, East Godavari Dist

3 Two CD copies.